



# **COMMONWEALTH of VIRGINIA**

## **DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **VWP Individual Permit Number 92-0158**

Effective Date: August 28, 2002

Minor Modification Date: August 20, 2012

Expiration Date: August 28, 2017

### **VIRGINIA WATER PROTECTION PERMIT MODIFIED PURSUANT TO THE STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT**

Based upon an examination of the information submitted by the owner, and in compliance with § 401 of the Clean Water Act as amended (33 USC 1341) and the State Water Control Law and regulations adopted pursuant thereto, the State Water Control Board (board) has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to surface waters, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.

**Permittee:** Botetourt Golf and Swim Club, Inc.

**Address:** 2414 Country Club Road, Troutville, Virginia 24175

**Activity Location:** Botetourt County Club, 2414 Country Club Road, Troutville, VA 24175, Botetourt County, VA

**Activity Description:** The continuance of water withdrawal from Catawba Creek, not to exceed a maximum daily withdrawal of 0.288 million gallons, a maximum instantaneous withdrawal rate of 200 gallons per minute, and a maximum annual withdrawal of 29.2 million gallons.

The permitted activity shall be in accordance with this Permit Cover Page, the Part I - Special Conditions, and the Part II - General Conditions.

A handwritten signature in black ink, appearing to read "Robert J. Weld".

Robert J. Weld, Regional Director,  
Department of Environmental Quality

A handwritten date "8/20/2012" in black ink.

Date

**A. Authorized Activities**

1. This permit represents the re-issuance of VWP Individual Permit Number 92-0158. This permit authorizes the withdrawal of surface water from Catawba Creek, not to exceed a maximum daily withdrawal of 0.288 million gallons, a maximum instantaneous withdrawal rate of 200 gallons per minute, and a maximum annual withdrawal of 29.2 million gallons. The Joint Permit Application dated February 21, 2002 was received on March 6, 2002 and deemed complete on April 9, 2002, except for the permit application fee received June 3, 2002. Withdrawals shall be authorized only when the daily current flow rate meets or exceeds the daily 80 percent exceedence rate as reported by the United States Geological Survey (USGS) at Stream Gage Number 02018500 (Catawba Creek near Catawba, VA). Data for this stream gage shall be obtained through the USGS and/or the USGS World Wide Web site at [http://waterdata.usgs.gov/va/nwis/uv/?site\\_no=02018500&PARAMeter\\_cd=00065,00060](http://waterdata.usgs.gov/va/nwis/uv/?site_no=02018500&PARAMeter_cd=00065,00060).
2. The project activities shall be adhered to as described in the Joint Permit Application and in any supplemental materials approved by DEQ, and as described in all permit conditions.
3. The permittee shall notify the DEQ, Blue Ridge Regional Office of any additional impacts to surface waters, including wetlands, or any change to the type of surface water impacts associated with this project. Any additional impacts to surface waters, including wetlands, or any change to the type of surface water impacts, shall be subject to individual permit review and/or modification of this permit. Compensation may be required.
4. This permit is valid for 15 years from the permit effective date. Re-issuance of the permit may be necessary if any portion of the authorized activities or any permit requirement (including compensation provisions) has not been completed. The original permit term and extension cannot exceed the maximum of 15 years.

**B. Standard Project Conditions**

1. The activities authorized by this permit shall be executed in a manner to minimize any adverse impact on stream beneficial uses, as defined in § 62.1-10(b) of the Code of Virginia.
2. No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams shall be installed to maintain low flow conditions. No activity may cause more than minimal adverse effect on navigation. The activity shall not impede the passage of normal or expected high flows and the structure or discharge shall withstand expected high flows. Flows downstream of the project area shall be maintained to protect all uses.

3. All excavation, dredging, and/or filling in surface waters shall be accomplished in a manner that minimizes stream bottom disturbances and turbidity increases.
4. Virginia Water Quality Standards shall not be violated in any surface water as a result of the project activities.
5. The permittee shall employ measures to prevent spills of fuels, lubricants, or other pollutants into surface waters.
6. No machinery may enter surface waters, unless authorized by this permit.

**C. Required Notifications and Submittals**

1. All required notifications and submittals shall be submitted to the DEQ office stated below, to the attention of the VWP permit manager, unless directed in writing by DEQ subsequent to the issuance of this permit:

Department of Environmental Quality  
Blue Ridge Regional Office  
3019 Peters Creek Road  
Roanoke, Virginia 24019

The permit number shall be included on all correspondence.

2. All reports required by this permit and other information requested by DEQ shall be signed by the applicant or a person acting in the applicant's behalf with the authority to bind the applicant. A person is a duly authorized representative only if:
  - a. The authorization is made in writing by a person described above; and
  - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization shall be submitted to DEQ prior to or together with any separate information, or applications to be signed by an authorized representative.

3. All submittals required by this permit shall contain the following signed certification statement: “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”
4. Any fish kills or spills of fuels or oils shall be reported immediately upon discovery. If spills or fish kills occur between the hours of 8:15 AM to 5:00 PM Monday through Friday, DEQ, Blue Ridge Central Regional Office, shall be notified at 540-562-6700. If DEQ cannot be reached, the spill shall be reported to the Virginia Department of Emergency Management (DEM) at 1-800-468-8892 or the National Response Center (NRC) at 1-800-424-8802.
5. Violations of Virginia Water Quality Standards shall be reported within 24 hours to DEQ, Blue Ridge Regional Office at 540-562-6700.
6. DEQ shall be notified in writing when potential environmentally threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.
7. The permittee shall keep a contemporaneous record of the dates and time that water is withdrawn, the volume of water that is withdrawn, the USGS gage data on the date of withdrawal, and the name of the individual reporting the data. Such information shall be recorded each time the pumps are started and at least once every 24 hours when pumping is continuous. This information shall be recorded for every month in which a withdrawal from Catawba Creek occurs of **each permit year**. This data shall be compiled into a brief report of activities and submitted to DEQ Blue Ridge Regional Office by the 10<sup>th</sup> of the month following data collection (for example, April’s data will be due May 10<sup>th</sup> of the respective year), in accordance with these permit conditions.
8. The permittee shall develop an alternative action plan to be approved by DEQ in the event that stream flow data is not available due to malfunctioning World Wide Web site(s), the unavailability of USGS personnel, or instrument failure. The alternative action plan shall detail how the current daily flow rate will be measured and how the data will be used to determine whether withdrawal will be authorized. This plan shall be approved by DEQ prior to water withdrawals authorized under this permit re-issuance.

9. If total ground water and/or surface water withdrawals exceed *10,000* gallons per day on average in any month, the permittee shall report the withdrawals to DEQ Blue Ridge Regional Office by January 31st of the next year as required under State Water Control Board (SWCB) Water Withdrawal Reporting Regulation (9 VAC 25-200-10 *et seq.*).
10. All records and information resulting from the monitoring activities required by this permit, including all records of USGS data and any maintenance activities to the withdrawal system, shall be retained for the life of the permit. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or as requested by the board.

**D. Water Withdrawals**

1. Water withdrawal rates shall comply with the limits set forth in Section A.1 above.
2. No withdrawals shall be allowed when the daily current stream flow rate at the intake location is less than the daily 80 percent exceedence flow rate at USGS Stream Gage Number 02018500 (Catawba Creek near Catawba, VA).
3. The permittee shall monitor the daily 80 percent exceedence flow rate using USGS Stream Gage Number 02018500 data for the purpose of determining when withdrawals are authorized according to Section A.1 above. This data may be obtained by contacting USGS and/or using the USGS World Wide Web site at [http://waterdata.usgs.gov/va/nwis/uv/?site\\_no=02018500&PARAMeter\\_cd=00065,00060](http://waterdata.usgs.gov/va/nwis/uv/?site_no=02018500&PARAMeter_cd=00065,00060). In the event that stream gage data is not available, the permittee shall follow procedures established in the alternative action plan approved by DEQ in accordance with Section C.8 of these conditions.
4. This permit does not authorize the permittee to discharge from the intake structure or its attendant lines. Any pollutant discharge from this source may be subject to the provisions of the SWCB's Virginia Pollution Discharge Elimination System Permit Program.
5. The intake structure's screens shall be designed, constructed, and maintained to prevent the impingement or entrapment of fish. Should the screens result in excessive fish mortality, as determined by the SWCB, the permittee shall undertake measures to eliminate mortality.

**A. Duty to Comply**

The permittee shall comply with all conditions of the VWP permit. Nothing in the VWP permit regulations shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and prohibitions. Any VWP permit violation is a violation of the law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of an application for a VWP permit extension or reissuance.

**B. Duty to Cease or Confine Activity**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

**C. Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the permit which may have a reasonable likelihood of adversely affecting human health or the environment.

**D. VWP Permit Action**

1. A VWP permit may be modified, revoked and re-issued, or terminated as set forth in 9 VAC 25-210 et seq.
2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VWP permit. If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9 VAC 25-210-185 (VWP Permit Extension).
3. VWP permits may be modified, revoked and re-issued or terminated upon the request of the permittee or other person at the board's discretion, or upon board initiative to reflect the requirements of any changes in the statutes or regulations, or as a result of VWP permit noncompliance as indicated in the Duty to Comply subsection above, or for other reasons listed in 9 VAC 25-210-180 (Rules for Modification, Revocation and Re-issuance, and Termination of VWP permits).

**E. Inspection and Entry**

Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;
2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit, and;
3. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

**F. Duty to Provide Information**

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, re-issuing or terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

**G. Monitoring and Records Requirements**

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include:
  - a. The date, exact place and time of sampling or measurements;
  - b. The name of the individuals who performed the sampling or measurements;
  - c. The date and time the analyses were performed;
  - d. The name of the individuals who performed the analyses;
  - e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
  - f. The results of such analyses; and
  - g. Chain of custody documentation.

#### **H. Transferability**

This VWP permit may be transferred to a new permittee only by modification to reflect the transfer, by revoking and re-issuing the permit, or by automatic transfer. Automatic transfer to a new permittee shall occur if:

1. The current permittee notifies the board within 30 days of the proposed transfer of the title to the facility or property;
2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of VWP permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
3. The board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and re-issue the VWP permit.

#### **I. Property rights**

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.



**J. Reopener**

Each VWP permit shall have a condition allowing the reopening of the VWP permit for the purpose of modifying the conditions of the VWP permit to meet new regulatory standards duly adopted by the board. Cause for reopening VWP permits includes, but is not limited to when the circumstances on which the previous VWP permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the VWP permit was issued and thereby constitute cause for VWP permit modification or revocation and re-issuance.

**K. Compliance with State and Federal Law**

Compliance with this VWP permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

**L. Severability**

The provisions of this VWP permit are severable.

**M. Permit Modification**

A VWP permit may be modified, but not revoked and re-issued except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP permit or are absent from it;
2. When new information becomes available about the operation or activity covered by the VWP permit which was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;
3. When a change is made in the promulgated standards or regulations on which the VWP permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;
5. When changes occur which are subject to “reopener clauses” in the VWP permit; or

6. When the board determines that minimum instream flow levels resulting from the permittee's withdrawal of water are detrimental to the instream beneficial use and the withdrawal of water should be subject to further net limitations or when an area is declared a Surface Water Management Area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.

**N. Permit Termination**

After notice and opportunity for a formal hearing pursuant to Procedural Rule No. 1 (9 VAC 25-230-100) a VWP permit can be terminated for cause. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP permit;
2. The permittee's failure in the application or during the VWP permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order;
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP permit modification or termination;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit; and
6. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

**O. Civil and Criminal Liability**

Nothing in this VWP permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

**P. Oil and Hazardous Substance Liability**

Nothing in this VWP permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

**Q. Unauthorized Discharge of Pollutants**

Except in compliance with this VWP permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses.
4. On or after October 1, 2001 conduct the following activities in a wetland:
  - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
  - b. Filling or dumping;
  - c. Permanent flooding or impounding;
  - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

**R. Permit Extension**

Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit, shall submit written notification request if an extension. The permittee must file the request prior to the expiration date of the VWP permit. Under no circumstances will the extension be granted for more than 15 years beyond the original effective date of the VWP permit. If the request for extension is denied, the VWP permit will still expire on its original date and, therefore, care should be taken to allow for sufficient time for the board to evaluate the extension request and to process a full VWP permit modification, if required.